IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 15955 of 2004

Between:

B.H.E.L. (R&D) Employees' Cooperative Housing Society Limited, TAB No. 122, Vikas Nagar, Hyderabad- 500 093, rep. by its President Sri C.N. Srinivasan.

..... PETITIONER

AND

1 The Cooperative Tribunal, Hyderabad.
2 The Deputy Registrar/ The Divisional Cooperative Officer, Secunderabad Division, Hyderabad.
3 M.R.C. Prasad, S/o Sri M. Venkata Rama Rao, B.H.E.L. (R&D) Employees Cooperative Housing Society Limited, B.H.E.L. (R&D), Vikas Nagar, Hyderabad - 500 093.
4 M.R. Prabhakar, S/o M.M. Jaya Rao, B.H.E.L. (R&D) Employees Cooperative Housing Society Limited, B.H.E.L. (R&D), Vikas Nagar, Hyderabad - 500 093.
5 R.V.S. Krishna Dutt, S/o Late Sri R.V.R. Sastry, B.H.E.L. (R&D) Employees Cooperative Housing Society Limited, B.H.E.L. (R&D), Vikas Nagar, Hyderabad - 500 093.
6 M.S.V.B. Subba Rao, S/o Sri M. Ganeshwara Rao, B.H.E.L. (R&D) Employees Cooperative Housing Society Limited, B.H.E.L. (R&D), Vikas Nagar, Hyderabad - 500 093.
7 L.N. Sepuri, S/o Sri S. Singanna, B.H.E.L. (R&D) Employees Cooperative Housing Society Limited, B.H.E.L. (R&D), Vikas Nagar, Hyderabad - 500 093.
8 T. Jayakar, Ex Vice President. B.H.E.L. (R&D) Employees Cooperative Housing Society Limited, B.H.E.L. (R&D), Vikas Nagar, Hyderabad - 500 093.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of mandamus, declaring the action of the first Respondent to returning the Appeal filed by the Petitioner Society under C.T.A.S.R.No. 5300 of 2004 as illegal, contrary to law and vitiated by the errors apparent on the facts of record and jurisdictional errors and further the direct the first Respondent to admit the Appeal against the Order of the second Respondent dated 10-8-2004 in I.A.No. 2 of 2004 in R.C.No. 641 of 94-B Hsg. and dispose of the same in accordance with law.

Counsel for the Petitioner: MR.M.V.DURGA PRASAD

Counsel for the Respondents 1 & 2: GP FOR COOPERATION

Counsel for the Respondents 3 to 8:----

The Court at the stage of admission made the following Order:

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for respondents 1 and 2.

The short question that arises for consideration in this writ petition is whether against the order passed by the Deputy Registrar,Divisional Co-operative Officer, in an interlocutory application pending surcharge proceedings under Section 60 of the Andhra Pradesh Co-operative Societies Act 1964 (for short 'the Act'), an appeal is maintainable under Section 76 of the Act.

The facts, which are not in dispute, are as follows:

An inquiry under Section 51 of the Act was conducted into the affairs of the petitioner society and on the basis of the inquiry report, the Divisional Co-operative Officer, Secunderabad Division passed an order under Section 60(1) of the Act for recovery of amounts from the Ex-Managing Committee of the society, vide proceedings dated 25-09-2002. However, on appeal, the said order was set aside by the Co-operative Tribunal and the matter was remanded for consideration afresh. Thereafter, a show cause notice was issued to the members of the Ex-Managing Committee of the society, calling upon them to submit their explanation and thereafter, the enquiry was taken up. While so, on behalf of the petitioner society I.A.No.2 of 2004 was filed before the second respondent seeking to summon Sti T.Lakshminarayana, General Manager (P&A) and Sri T.Krishna Murthy, Ex-Deputy General Manager (Finance) of Corporate R & B, BHEL, to give evidence and also to be cross examined as witnesses on behalf of the society. The said application was dismissed by the 2nd respondent – Deputy Registrar, by order dated 10-08-2004 holding that in the absence of original inquiry report, there is no need to call the said persons for giving evidence. Aggrieved by the said order, the petitioner society preferred an appeal under Section 76 of the Act before the first respondent-Tribunal. The said appeal was returned by the Tribunal with an endorsement that the impugned order passed on an interlocutory application is not a final order and therefore, the appeal under Section 76(1) of the Act is not maintainable. It was also observed that the proper remedy to the aggrieved party against the interlocutory order is a Revision under Section 77 of the Act. Challenging the said order, dated 26-08-2004, this writ petition is filed.

On behalf of the second respondent, a detailed counter-affidavit has been filed denying the allegations made by the petitioner.

Learned counsel for the petitioner vehemently contends that since the wording of Section 76 of the Act is unambiguous and provides a right of Appeal to “any person” aggrieved by “any order” passed under Section 60 of the Act, the petitioner society has rightly preferred an appeal under Section 76 of the Act and the impugned order passed by the first respondent rejecting the said Appeal as not maintainable is erroneous and unsustainable. For proper appreciation of the issue involved in this writ petition, Section 76(1) of the Act may be extracted as hereunder.

> *“Any person or society aggrieved by any decision passed or order made under Section 6, Section 9A, Section 9B, Section 9C, Section*

12A, Section 13, Section 15A, Section 16, Section 17, Section 19, Section21, Section 21A, Section 21AA, Section 23, Sub-section (3) of Section 32, Section 34, Section 34A, Section 60, Section 62, Section 64, Section 66, Section 70, Section 71, Section 73 and Section 117 may appeal to the Tribunal:

Provided that nothing in this sub-section shall apply to any order of withdrawal or transfer of a dispute under sub-section (3) of Section 62".

It is no doubt true that Section 76 provides that any decision passed or order made under Section 60 is appealable. However, the question is whether the expression "any decision or order" employed under Section 76 includes an interlocutory order passed by the Tribunal during the pendency of the proceedings under Section 60 of the Act.

An identical question though arose under a different enactment, but contains an analogous provision, was considered by the Supreme Court in CENTRAL BANK OF INDIA v GOKAL CHAND. In the said decision, the Supreme Court was interpreting Section 38(1) of the Delhi Rent Control Act 1958, which provides for an appeal and runs as under:

"An appeal shall lie from "every order" of the controller made under this Act to the Rent Control Tribunal".

The Supreme Court held as follows:

"the object of Section 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of Section 38(1) the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties and in a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken

towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any in such an order as a ground of objection in his appeal from the final order in the main proceedings. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed under Section 37(2) is an order passed under the Act and is subject to appeal under Section 38 (1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an exparte order is subject to appeal to the Rent Control Tribunal."

Following the said ratio laid down by the Supreme Court, a Division Bench of this Court in CHAGANLAL (DIED) SARDARILAL v N.PERSHAD, interpreted Section 20(1) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act 1960 and held that it is not every order of the Rent Controller that would become appealable, nor would it mean that only final orders passed by the Rent Controller are appealable and not interlocutory orders, but the test is whether it is an order affecting any rights or liabilities of the parties.

It is relevant to note that Section 120 of the A.P. Co-operative Societies Act, under which the case on hand arises specifically states that in exercising the powers conferred under the Act, the Tribunal, the Registrar or any person authorised by him by general or special order shall have the power of a civil Court while trying the suit under the C.P.C. in respect of summoning and enforcing the attendance of any person and examining him on oath or affirmation. However, the order passed under Section 120 of the Act is not made appealable under Section 76 of the Act which indicates the intention of the Legislature to prohibit the appeals against such procedural orders. There can be no doubt about the fact that the order in question i.e., rejecting the request of the petitioner society for summoning certain persons for giving evidence is merely procedural and does not affect the rights or liabilities of the parties. The said order, at the most, can be said to be a step taken towards the final adjudication and for assisting the parties in the prosecution of their case in the

pending proceedings under Section 60 of the Act. The said order merely regulates the procedure and does not affect any right or liability of the parties.

In the facts and circumstances and having applied the test laid down by the Supreme Court in Central Bank's Case (supra 1), undoubtedly the order passed by the second respondent in I.A.No.2 of 2004 cannot be said to be affecting the rights or liabilities of the petitioner and therefore the Tribunal below has rightly held that the Appeal is not maintainable. What is made appealable under Section 76 of the Act is only an order that affects the rights and liabilities of the parties and not an order, which is merely procedural in nature.

In Chaganlal's Case (supra 2), the Division Bench of this Court referred to the analogous provisions in several other statutes and arrived at a conclusion that only those orders, which affect the rights or liabilities of the parties, are appealable. In the light of the ratio laid down in the above cases, the order passed by the first respondent-Tribunal holding that the appeal is not maintainable is in accordance with the settled principles of law and cannot be said to be vitiated by any infirmity.

In the circumstances, the writ petition is devoid of any merit and the same is accordingly dismissed. No costs.

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03-11-2004

kdl

Note: LR copy to be marked.

One fair copy to the Hon'ble Ms. Justice G.Rohini

(for her lordship's kind perusal)

To

1 The Cooperative Tribunal, Hyderabad.

2 The Deputy Registrar/ The Divisional Cooperative Officer,

Secunderabad Division, Hyderabad.

3 Two C.Cs. to the Government Pleader for Co-operative, High Court of A.P., Hyderanad, (OUT).

4 The Under Secretary, Union of India, Ministry of Law Justice and Company affairs, New Delhi.

5 The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

6. 8 L.R. copies.

7. Two C.D. Copies.